

BEFORE THE BOARD OF ENVIRONMENTAL REVIEW  
OF THE STATE OF MONTANA

In the matter of the amendment )	NOTICE OF AMENDMENT
of ARM 17.8.749, 17.8.759, )	
17.8.763 and 17.8.764 )	
pertaining to conditions for )	(AIR QUALITY)
issuance or denial of permits, )	
review of permit applications, )	
revocation of permits and )	
administrative amendment to )	
permits )	

TO: All Concerned Persons

1. On June 26, 2003, the Board of Environmental Review published MAR Notice No. 17-194 regarding a notice of public hearing on the proposed amendment of the above-stated rules at page 1252, 2003 Montana Administrative Register, issue number 12.

2. The Board has amended the rules exactly as proposed.

3. The following comments were received and appear with the Board's responses:

COMMENT NO. 1: The U.S. Environmental Protection Agency (EPA) commented that it would prefer that the Board adopt a 30-day comment period for all preliminary determinations. EPA recognizes that the Board has used the 15-day public review period for many years, and that it was originally approved by EPA in reliance on the grandfathering provisions of 40 CFR 51.161(c). Under these circumstances the continued use of a 15-day comment period for most minor sources is acceptable; however, there is one class of "minor" preliminary determinations that merits special consideration. In some situations, a source that would otherwise be subject to major source permitting might accept emission limits in its permit to avoid major source permitting, either by limiting potential to emit or by making enforceable emission reductions that can be used for netting purposes. EPA believes that these types of permitting actions are highly significant and can be quite complex, and should receive more than the minimum review time to facilitate meaningful public comments. EPA requested that the rule be revised to also require a 30-day public review for preliminary determinations for sources that accept limits to avoid major source permitting (i.e., for both construction and Title V operating permits).

RESPONSE: The Board has not made the suggested revision. As the proposed amendments are currently written, the 30-day comment period and the 75-day period for final action apply to Title V synthetic minor operating permits, which are subject to the federal air permitting provisions of 42 USC 7661. However, applying the 30-day comment period to synthetic minor

source preconstruction permits is beyond the legislative mandate.

COMMENT NO. 2: EPA commented that although it is not stated in the proposed revisions to ARM 17.8.759(4)(b), EPA assumes that the state provides the necessary 30-day public comment period for preliminary determinations involving case-by-case maximum achievable control technology (MACT) determinations. The state has adopted by reference 40 CFR Part 63 in ARM 17.8.302 and 17.8.342, and 40 CFR Part 63 specifically requires a 30-day public comment period. However, ARM 17.8.342(7) indicates that ARM Title 17, chapter 8, subchapter 7, governs the application, review and final approval or denial of a notice of MACT approval or 112(g) exemption and specifically references ARM 17.8.759. Since the proposed 30-day public review period in ARM 17.8.759(4)(b) applies only to sources subject to 42 USC 7475, 7503 or 7661, EPA is concerned that sources might ask the state to follow the 15-day notice provision of ARM 17.8.759 instead of the 30-day notice provisions of 40 CFR 63.43(h)(ii) and 63.54(c)(2). EPA requested that the Board revise the proposed amendments to clarify that the 30-day comment period also applies to all MACT determinations.

RESPONSE: The Board has not made the suggested revision. As the proposed amendments are currently written, the 30-day comment period and the 75-day period for final action apply to case-by-case MACT determinations, since these applications are subject to the federal air permitting provisions of 42 USC 7661. Also, specifically stating that the 30-day comment period applies to case-by-case MACT determinations might imply that this comment period does not apply to other types of permit applications subject to the provisions of 42 USC 7661 that are not listed in the rule.

BOARD OF ENVIRONMENTAL REVIEW

By:

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JOSEPH W. RUSSELL, M.P.H.  
Chairman

Reviewed by:

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DAVID RUSOFF, Rule Reviewer

Certified to the Secretary of State, \_\_\_\_\_, 2003.